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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MICHAEL LAMBRIGHT

Appeal 2009-005963
Application 10/612,254
Technology Center 3600

Before STEVEN D.A. McCARTHY, MICHAEL W. O'NEILL
and FRED A. SILVERBERG, *Administrative Patent Judges*.

McCARTHY, *Administrative Patent Judge*.

DECISION ON APPEAL¹

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

1 The Appellant appeals under 35 U.S.C. § 134 from the Examiner's
2 decision rejecting claims 1, 3-9 and 11-22 under 35 U.S.C. § 102(b) as being
3 anticipated by Chandler (US 3,760,965, issued Sept. 25, 1973). We have
4 jurisdiction under 35 U.S.C. § 6(b).

5 We REVERSE.

6 Claim 1 recites:

7 1. A spare tire carrier for vehicles which
8 comprises:

9 a support arm for mounting a spare tire
10 thereon, said support arm having a fixed end, a
11 free end and a central axis; and

12 a cooperating tubular assembly coupled to
13 the fixed end of the support arm for mounting the
14 support arm on a vehicle,

15 said cooperating tubular assembly including
16 upper and lower tubular members and upper and
17 lower opposed planar guide plates wherein the
18 upper guide plate is attached to the upper tubular
19 member and the lower guide plate is attached to
20 the lower tubular member and the upper and lower
21 opposed planar guide plates are coupled together
22 so as to allow for relative rotational movement of
23 said upper and lower opposed guide plates about a
24 common axis which extends through the upper and
25 lower guide plates, whereby relative rotational
26 movement of the upper and lower guide plates
27 about said common axis simultaneously causes the
28 support arm to rotate about its central axis while
29 pivoting the central axis of the support arm with
30 respect to the cooperative tubular assembly, said
31 upper and lower tubular members having a
32 common central axis of pivot.

1 Claim 9, the only other independent claim on appeal, recites a vehicle
2 including a spare tire carrier comprising elements similar to those recited in
3 claim 1.

4 Chandler describes a carrier for carrying a motorcycle on a motor
5 vehicle. (Chandler, col. 1, ll. 15-18). Chandler's carrier 22 includes a
6 channel or rail 23 pivotally coupled to a support arm 27 coupled to the motor
7 vehicle. (Chandler, col. 2, ll. 47-51 and 62-66). Figure 7 of Chandler
8 depicts a cheek plate 53 welded to the bottom side 27B of the support arm 27
9 at a fixed end 27F of the support arm 27. (Chandler, col. 4, ll. 2-6). Figure
10 7 of Chandler also depicts a plate 59 supported by plates 61, 63. (Chandler,
11 col. 4, ll. 12-14). Figure 7 shows the plates 61, 63 as being welded to the
12 channel 23 to form a hollow structure triangular in cross section. (*See id.*)
13 A pivot rod 65 causes the plates 53, 59 to engage along parallel surfaces to
14 couple the channel 23 to the support arm 27 for pivotal movement along an
15 inclined axis 55. (Chandler, col. 4, ll. 27-33).

16 The Examiner finds that Chandler discloses a support arm 23; an
17 upper planar guide plate 53 attached to an upper tubular member 27F; a
18 lower planar guide plate 59 attached to a lower tubular member including
19 the plates 61, 63 and the lower portion of the channel 23. (Ans. 3).

20 The Appellant argues that the fixed end 27F of Chandler's support
21 arm 27 and the member including the plates 61, 63 in combination with the
22 lower portion of the channel 23 do not have "a common central axis of
23 pivot" as claims 1 and 9 require of the upper and lower tubular members.
24 (App. Br. 14-15).

25 The Examiner responds that "Chandler's axis 65 is common to both
26 upper and lower tubular assemblies because it extends through plates 53, 59

1 which allows relative motion of lower tubular [assembly] about upper
2 tubular [assembly].” (Ans. 8). Furthermore, in the Advisory Action
3 entering the amendment inserting the language “said upper and lower
4 tubular members having a common central axis of pivot” into claim 1 for
5 purposes of this appeal, the Examiner concluded that “‘common’ and
6 ‘central’ are relative terms such that without a frame of reference any pivot
7 axis can be a central axis and as long as the axis runs through the apparatus
8 it is common to the tubes which comprise the apparatus.” (Advisory Action
9 mailed May 20, 2007 at 2).

10 The Examiner’s interpretation of the term “said upper and lower
11 tubular members having a common central axis of pivot” as used in claims 1
12 and 9 is unreasonably broad. In the Advisory Action mailed May 20, 2007
13 at 2, the Examiner concludes that “any pivot axis can be a central axis,”
14 thereby reading the word “central” out of the term “central axis of pivot.”
15 Likewise, the Examiner’s conclusion that any axis which “runs through the
16 apparatus” is “common” to the tubular members effectively reads the word
17 “common” out of the claims.

18 While the meaning of the term “common central axis of pivot” is not
19 immediately clear when read in view of the Specification, the words
20 “common” and “central” cannot be given any meaningful effect in the term
21 “said upper and lower tubular member having a common central axis of
22 pivot” without excluding Chandler’s axis 55 (that is, the axis of Chandler’s
23 pivot rod 65). The Examiner has not provided a persuasive explanation as to
24 how Chandler’s axis 55 is “central” to both the fixed end 27F of Chandler’s
25 support arm 27 and the member including the plates 61, 63 in combination
26 with the lower portion of the channel 23 in any sense which does not render

the word “central” meaningless. We do not sustain the rejections of independent claims 1 and 9, or of the claims depending from claims 1 and 9, under § 102(b) as being anticipated by Chandler.

DECISION

We REVERSE the Examiner’s decision rejecting claims 1, 3-9 and 11-22.

REVERSED

Klh

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